

March 5, 2013

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**Via Email and First Class Mail**

Scott.Blackmun@usoc.org

Scott M. Blackmun, Esq.  
Chief Executive Officer  
United States Olympic Committee  
One Olympic Plaza  
Colorado Springs, CO 80909

**Re: Section 10 Complaint: US Speedskating**

Dear Scott:

As you know, our Firm represents a number of short-track skaters, their parents and supporters.

We have been attempting since at least July 2012 to obtain the compliance by US Speedskating with the requirements for NGBs as set forth in the Sports Act and USOC Bylaws.

Our attempts in that regard have not been successful; in fact, in our opinion, things with US Speedskating have only gotten worse and dramatically so recently.

Accordingly, we file herewith a "Section 10 Complaint" for action by the USOC in accordance with the procedures for such complaints as set forth in the Sports Act and USOC Bylaws.

Because of the rapidly deteriorating situation with Speedskating, we respectfully request that you have this filing brought to the attention of the USOC Board of Directors at its meeting in Colorado Springs, this Friday.

Thank you very much for your attention to this matter. I would be pleased to discuss this with you should you so desire.

Sincerely yours,



Edward G. Williams

Attachment

Cc: US Speedskating: Messrs Greenwald and Frank  
USOC Associate General Counsel  
Chairperson, USOC Athletes' Advisory Counsel  
USOC Athletes Ombudsman's Office  
(Each w/ attach)

## **COMPLAINT**

### **PURSUANT TO SECTION 10 OF THE USOC BYLAWS**

### **AGAINST**

### **US SPEEDSKATING,**

### **FOR ITS PERSISTENT AND SERIOUS NON - COMPLIANCE WITH THE MEMBERSHIP REQUIREMENTS FOR NGBs UNDER THE SPORTS ACT.**

#### **INTRODUCTION**

This is a complaint by members of US Speedskating (hereinafter "Claimants") against US Speedskating ("USS") filed with the US Olympic Committee pursuant to Section 10 of the USOC's Bylaws.

This Section 10 Complaint is being filed with the USOC on account of USS's failure, refusal and, indeed inability (at least under its present leadership) to comply with membership requirements for NGBs, as mandated by the Ted Stevens Olympic and Amateur Sports Act, Title 36 U.S.C. Sections 220501, *et seq.* (the "Sports Act") and the Bylaws of the USOC applicable to NGBs.

In addition to its non-compliance with Federal law, USS also does not comply with the "Governance Guidelines" for NGBs adopted by the USOC Board of Directors in April, 2005; nor does USS comply with its own Bylaws which purport to implement the USOC's April 2005 "Governance Guidelines" with respect to an NGB being "Board-governed and Staff-managed."

Quite significantly (and upon information and belief), USS can no longer be considered a "going concern" from a financial standpoint. Claimants allege this "upon information and belief" because the most recent financial statements that USS has made available to its members are dated as of May 31, 2012, and they show a deficit of over \$750,000.

USS refuses to provide its more recent financials.

However, Claimants are aware that the financial condition of USS has only gotten much worse since its last disclosed financials dated May 31, 2012.

For example, since May, 2012, USS has been required to engage outside legal counsel in connection with a number of serious mis-steps (each mis-step in violation of the Sports Act).

These mis-steps have cost USS a lot of money - - money that should have been used to support athletes. These mis-steps also evidence USS's lack of managerial capacity.

As was candidly reported at a January 7, 2013 USS Board meeting:

**“Fundraising has been absolutely stationary.”**

**“Legal costs could be the killer.”**

These comments are taken from heavily redacted minutes of the January 7, 2013 USS Board meeting, only recently produced and not yet made available to the general USS membership.

Upon information and belief, USS's debt is now approaching \$1 million.

However, Claimants (who are all members of USS) do not know the true financial picture of USS since USS is not transparent in either its finances or its operations. USS has refused to disclose its current (or most recent) financials, notwithstanding multiple requests therefore.

Attached is a copy of a Grievance filed with USS dated August 30, 2012. This Grievance was filed in accordance with USS's internal procedures in an attempt to resolve the non-compliance issues within USS without the need to resort to remedies available under the Sports Act. As noted below, it is a requirement of the Sports Act to exhaust remedies offered by the NGB (or to show why such exhaustion would be fruitless) prior to filing a Section 10 Complaint.

However, USS has never scheduled a Hearing on the Grievance filed over six months ago (in violation of its own internal grievance procedures).

On the merits, Claimants allege, among other things, that: **US Speedskating is in violation of Section 220522(a)(2) of the Sports Act in that USS does not have “the managerial and financial capability to plan and execute its obligations” under the Sports Act and USOC Bylaws. (Emphasis supplied)**

It is Claimants' position that the USS Board of Directors must be reconstituted with individuals without inherent and disabling conflicts of interest, and must also include the requisite number of “*independent directors*” who are capable of hiring a CEO who is willing and able (and permitted by the Board) to bring the NGB into compliance with the Sports Act and USOC Bylaws. If that does not happen, the members of the USS will continue to suffer as a result thereof and USS athletes will continue to be severely disadvantaged as a result of USS's non-compliance (and lack of funding) as they prepare for the 2014 Sochi Olympics.

**THE CLAIMANTS:**

**Ms. Allison Baver**

**Mr. Nate Di Palma**

**Mr. Jack Jayner**

**Mr. Levi Kirkpatrick**

**Mr. Jordan Malone**

**Ms. Eva Rodansky**

**Mr. James Rodowsky**

**Ms. Patricia Rodowsky**

Claimants respectfully request the opportunity to add additional claimants as individuals may become aware of this filing and wish to join them in this Section 10 Complaint.

**CLAIMAINT'S REPRESENTATIVE:**

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**THE RESPONDANT:**

**US SPEEDSKATING**  
**5662 Couger Lane**  
**Kearns, UT 84118**

**Attn: Tom Frank, President    TFrank@usspeedskating.org**  
**Mark Greenwald, CEO    MGreenwald@usspeedskating.org**

## JURISDICTIONAL BASIS

1. Jurisdiction for the US Olympic Committee to hear and determine this Complaint exists pursuant to Section 220527(a) (1) of the Sports Act and Section 10.1 of USOC Bylaws, in that each of the Claimants herewith is a member of US Speedskating and each, individually and collectively, seeks to compel US Speedskating to comply with the requirements of Sections 220522 and 220524 of the Sports Act, as well as the Bylaws of the USOC applicable to National Governing Bodies.

## NGB EXHAUSTION AND UNNECESSARY DELAY

2. Section 220527(b) of the Sports Act states that “an organization or person may file a [Section 10] Complaint only after exhausting all available remedies within the national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.” *See also* Section 10.11 of the Bylaws of the USOC. (Same)

3. A formal Grievance was filed with the CEO of USS dated August 30, 2012, alleging USS’s noncompliance with the NGB membership requirements of the Sports Act, and requesting that the Grievance be referred to the USS Grievance Committee for a hearing with respect to those allegations. (See Exhibit attached hereto)

4. The Grievance was accompanied by the requisite \$250 filing fee.

5. USS Bylaw Article XVIII, Section 18.3 requires the USS CEO, upon receipt of a filed Grievance, to “immediately refer the matter to the Grievance Committee”. (Upon information and belief, the USS CEO failed and neglected to fulfill his obligations in this regard under the USS Bylaws.)

6. USS Bylaw Article III, Section 3.1.M requires USS to “provide procedures for the prompt and equitable resolution of grievances of its members.” (Obviously, that was not done.)

7. Over six (6) months have passed since the filing of the Grievance, and USS has never scheduled or even sought (at least to Claimants’ knowledge) to schedule a Hearing on the Grievance.

8. A mediation session with respect to USS’s non-compliance with the Sports Act was proposed by the USOC Athlete Ombudsman for January 2013. It did not take place on account of scheduling conflicts. Following this, however, USS engaged in a bizarre series of actions, each in violation of the Sports Act.

9. Those actions demonstrate a shocking disregard of the issues of non-compliance raised in the August 30, 2012 Grievance, and demonstrate an unwillingness by USS to come into compliance. The actions include, but are not limited to, the following:

- a) USS had held a number of BOD meetings which were never noticed to the members; and USS has refused to produce full and complete minutes of these meetings, which were admittedly supposed to be “open” meetings;
- b) USS has refused to produce its most recent financials (or, indeed, *any financials* ) since its financials dated as of May 31, 2012, which financials show a deficit of more than \$750,000;
- c) USS denied a number of athletes from the Washington, DC area (all members of USS and green – card holders), the opportunity to participate in tryouts for the World Junior Short Track Championships, without fair notice and opportunity for a hearing. This disregard of Federal law resulted in a “Section 9 Complaint” being filed with the USOC by the disenfranchised athletes, and the expenditure of not only tens of thousands of dollars by USS, but also much time and expense on the part of the USOC Athlete Ombudsman in an attempt to resolve the dispute.
- d) USS prosecuted two alleged “Code of Conduct” violations against one of the skaters who boycotted the USS program on account of the coaches’ abuse. These “Code of Conducts” were prosecuted by USS at the behest of a former employee of USS who is now aligned with the disgraced “resigned” coaches. These “Code of Conducts” were also prosecuted by USS in violation of the athletes’ due process rights and, indeed, in violation of USS’s own bylaws. This has resulted in a Motion to Dismiss being filed with USS with respect to one “Code of Conduct” and a separate “Section 9 Complaint” being filed with the USOC with respect to the second, inasmuch as the second “Code of Conduct” seeks to suspend the athlete from international competition for up to one year. As yet, the USOC has not been actively involved in attempting to resolve this “opportunity to participate dispute” but may become involved if USS continues to persist in its threat to deny this athlete his opportunity to compete in “protected competition” as defined by the USOC under its Bylaws.
- e) USS admittedly (and wrongfully) used “unfettered discretion” to pick an athlete to fill a “discretionary” spot on the team that will represent the United States in the World Senior Short Track Championships (about to take place in Hungary). USS did so in violation of the USOC’s “best practices” for NGBs which require NGBs to use objective criteria to make discretionary choices (when such discretionary choices are permitted) - - and not to use “unfettered discretion” in picking athletes to a team, as USS recently did so here.
- f) At the conclusion of a recent arbitration Hearing before a respected AAA (and CAS) arbitrator, the arbitrator, in her summary decision (the detailed Reasoned Award is not yet available) found that USS had violated the rights

of the Claimant (and, indeed, the rights of all affected athletes in the arbitration) under Section 220524 the Sports Act.

10. These actions by USS, all having occurred since the filing of the August 30, 2012 Grievance, coupled with the fact that USS has never scheduled a Hearing on the Grievance in accordance with its own internal Grievance Hearing procedures, now makes it clear that any attempt at mediation would not be successful and, further, that the belated scheduling of a Grievance Hearing by USS before a USS Grievance Committee would result in unnecessary delay in getting USS to correct its multi-faceted and serious violations of the Sports Act.

11. In summary:

- a) US Speedskating, by its own actions since the filing of the August 30, 2012 Grievance, has shown that it is either unwilling or unable (or both) to process the August 30, 2012 Grievance filed by the Claimants;
- b) The non-compliance issues raised by Claimants in their August 30, 2012 Grievance, have only become worse since the filing of the Grievance; and
- c) USS is presently collapsing under the weight of its huge debt and the burdens resulting from its non-compliance with the requirements of the Sports Act.

12. For the above reasons, Claimants herein respectfully allege that they have demonstrated, by clear and convincing evidence, that six months after the filing of the August 30, 2012 Grievance, USS has amply demonstrated that it is unable or unwilling to comply with its own Bylaws which call for a hearing on any Grievance in a "prompt and equitable manner." This matter is now ripe to proceed before the USOC under Section 10 of the USOC Bylaws. Any further delay in correcting the substantial deficiencies with respect to USS's non-compliance with the requirements of Federal law will only further hurt the athletes' preparations for the 2014 Sochi Olympics.

### **GROUND and EVIDENCE OF NONCOMPLIANCE**

13. Claimants respectfully refer to the annexed Grievance dated and filed with USS August 30, 2012, and incorporate the allegations and evidence cited therein by reference, as if fully set forth at length herein.

14. In summary, however, Claimants allege the following violations by USS of the Sports Act:

**(a) USS LACKS THE FINANCIAL CAPABILITY REQUIRED OF NGBs BY SECTION 220522(a)(2) OF THE SPORTS ACT:**

(1) USS is in violation of Section 220522(a)(2) of the Sports Act (which provides that an NGB must have the financial capability to execute its obligations as an NGB). USS is also in violation of the corresponding Section 8.7(k) of the

USOC Bylaws (which states that an NGB must seek to generate revenues in addition to those provided the NGB by the USOC).

(2) Additionally, USS is in further violation of Section 8.7(k) in that it has failed to adopt and adhere to a realistic budget; nor does it maintain accurate accounting records in accordance with generally accepted accounting principles (“GAAP”).

(3) USS also fails in meeting the financial requirements of Section 220522(a)(2) of the Sports Act in that it lacks sufficient staff who can competently and responsibly record financial transactions and prepare accurate financial statements in a timely fashion.

(4) USS is in further violation of Section 220522(a)(2) of the Sports Act in that it does not have sufficient assets to meet its current financial obligations, let alone provide base funding for athletes (of which the latter should be one of its primary functions).

(5) Because USS is, at times, so strapped for cash, it co-mingles cash prize money it receives on behalf of USS athletes with the general operating accounts of USS, and uses such prize money to pay its ordinary bills, thereby denying athletes the timely payment of their earned prize money.

(6) Upon information and belief, USS may not be considered a “going concern” under GAAP.

**(b) USS LACKS THE MANAGERIAL CAPABILITY REQUIRED BY NGBs BY SECTION 220522(a)(2) OF THE SPORTS ACT.**

(1) Section 220522(a)(2) of the Sports Act provides that an NGB must have the managerial capability to plan and execute its obligations as an NGB, which includes having competent and effective staff leadership. The USOC Governance Guidelines, which are a part of the “best practices” to be followed by an NGB, require that an NGB be “Board-governed” and “Staff-managed.” An NGB cannot effectively plan and execute its obligations if Board members (or self-appointed “important long-timers” - - sometimes blessed with a title but oftentimes not) continually interfere with the CEO’s management of staff.

(2) Here, even though the Bylaws correctly call for USS to be Board governed and Staff-managed (see USS Bylaw Article V, Section 5.7 and Article VI, Section 6.8) that, in fact, is not what occurs. The governance and management of USS actually consists of a bouillabaisse of committees, board members, “activity managers”, former Board members and other hangers-on, all of which makes for a highly ineffective and dysfunctional NGB.



(3) For at least the last three years, if not longer, USS has been plagued with excessive staff turnover; a revolving door of coaches (some accused of code of conduct violations never acted upon by USS; boycotting athletes; sexual misconduct allegations (now admitted) by a former President of USS; the lack of transparency in the managerial and financial operations of USS; the failure of USS to confront in any meaningful way conflicts of interest; rampant overages of budgets and mismanagement of funds; board members acting as if they were staff; and serious allegations of ethical misconduct which were not internally addressed, but which required the intervention of the USOC to conduct an investigation of alleged conflicts (which the USOC found to exist). Remarkably the Board member who was found to have the conflict of interest was never disciplined in any way, and still serves on the USS Board and (more importantly for him) as a member of an important ISU Committee.

(4) Unfortunately, USS has not learned its lessons. Once again, USS finds itself with inadequate management and failed Board oversight). The Board does not effectively oversee a budget; nor does it effectively carry out its role of providing or approving financial strategies; nor does the Board do long-range financial planning, or review and approve financial statements.

(5) For example, at the Board's September 15, 2012 meeting, the May 31, 2011 deficit of over \$750,000 came as a complete surprise to the Board. More remarkably, the extent of the ballooning deficit also came as a surprise to the CEO !! In response to questions from the Board why the CEO had not advised the Board of the increased deficit, the CEO admitted that he too was unaware of the three quarter of a million dollar deficit until recently. That was because, he explained, the Board - mandated cuts in staff made it impossible for his reduced staff to give him an accurate and timely financial reports of the accounts of USS.

(6) In short, USS has failed to meet its managerial obligations as an NGB as required by Section 220522(a)(2) of the Sports Act.

**(c) USS HAS A FAILED AND INEFFECTIVE GRIEVANCE PROCESS**

(1) Section 220522(a)11) of the Sports Act requires that an NGB must provide (and have) procedures or the prompt and equitable resolution of grievances of its members.

(2) Claimants' so-called "Exhibit A" of USS's failure in this regard is Claimants' Grievance itself which, six months after its filing, has never been heard by the USS Grievance Committee or even scheduled for a Hearing.

(3) But it gets worse. USS has a procedure which apparently permits allegations of misconduct (depending on the circumstances and whose ox is getting gored) to either

- (a) Ignore the Grievance, with the hope it will go away;
- (b) Have the President (or sometimes an attorney Board member, who acts as legal counsel) summarily declare the Grievance “without merit,” in which event the Grievance is dismissed without a hearing;
- (c) Hold a “Grievance Hearing” without notice to the Grievant, at which Hearing the allegations (not surprisingly) are dismissed; or
- (d) Conduct an “investigation” of the “Code of Conduct” without notice to (or input from) the alleged wrongdoer which again, not surprisingly, results in a finding of guilt and the imposition of sanctions on the now found “guilty” party who can then “appeal” his/her conviction to a Hearing Committee, but only upon payment of a \$250 filing fee to the USS treasury.

(4) Upon information and belief, “Code of Conducts” have been filed against certain Claimants herein, and have been processed, all without notice to Claimants. (The CEO says he has them in his desk drawer, including Code of Conducts filed against him which have never been processed.)

(5) Amendments to the USS Bylaws pertaining to USS’s disciplinary procedures which would guarantee due process were proposed and submitted by a Claimant herein at a USS Board meeting in September 2012. Those proposed amendments to the Bylaws have never been taken up or acted on by the Board or any subcommittee of the Board.

(6) USS fails to meet its obligations to provide for the prompt and equitable resolution of grievances of its members as required by Section 220522(a) (11) of the Sports Act.

**(d)THE USS BOARD (AND MANAGEMENT) IS NOT RESPONSIBLE TO THE MEMBERS OF USS: NOR IS USS FINANCIALLY AND OPERATIONALLY TRANSPARENT AND ACCOUNTALBE TO ITS MEMBERS, ALL IN VIOLATION OF SECTION 220524 OF THE SPORTS ACT AND SECTION 8.7(I) OF THE USOC BYLAWS.**

(1) Section 220524 of the Sports Act provides that an NGB shall be responsible to the persons and amateur sports organizations it represents. Section 8.7(1) of the USOC Bylaws provides that an NGB shall be financially and operationally transparent and accountable to its members.

(2) USS fails on both accounts.

(3) USS holds meetings of its Board of Directors (which under its own Bylaws are declared to be “open”) without any notice to its members to attend, either in person or by means of a telephone call-in, with the result that the meetings are, in effect, secret meetings of the Board.

(4) To ensure the privacy and sanctity of these secret Board meetings, USS publishes no minutes of these meetings, to the extent minutes are even kept.

(5) The USS Board (and management) have increasingly become insular in their activities, and they fail to communicate their agenda, decisions and activity to the members (including athletes) that they are supposed to serve.

(6) USS does not make known its financial condition to its members, For example, at its September 15, 2012 Board meeting (only one of its two advertised “open” Board meetings a year), the Treasurer (who has since abruptly resigned) gave only a vague report of the financial condition of USS, unsupported by any published financials or “hand-outs.” When the minutes of the Spring Board meeting were eventually published to the members of USS, the minutes -- under “Treasurer’s Report” -- state only that a “Report” was given -- nothing more. There is no disclosure in the minutes what even the vague report purported to state; and there are no financials attached to the minutes which would give the membership even a clue as to the financial condition / status of USS.

(7) The most recent published financials of USS available to members are as of May 31, 2012. As previously noted, those financials show a deficit as of that date of over \$750,000. USS has refused to provide any more recent financials to Claimants or to their Counsel or, upon information and belief, to anyone else.

(8) USS does not make known the criteria it uses (or even who uses the unknown criteria) to base its funding decisions for athletes.

(9) The same goes for USS’s rampant use of “discretionary choices” for the appointment of athletes to Team positions.

(10) For example, and as was established in a very recent arbitration Hearing, USS did not publish the selection criteria it will use to determine a “discretionary” choice to a World Championship Team, with the unconscionable result that the athletes trying out for the Team had no clue what standards or criteria they would have to meet in order to be named to the Team as a “discretionary” choice. The reason the athletes had no clue as to what criteria they will be judged on to be named to the Team as a “discretionary choice” is because the members of the Committee themselves also had no clue what criteria they would apply until they actually met to make their decision. The arbitrator in that

matter found that by so doing, USS was in violation of Section 220524 of the Sports Act.

(11) As shown above, the USS Board is not transparent with respect to its activities, and fails to keep members and athletes informed of essential information that the Board and management is obligated to communicate to members and athletes, all in violation of Section 220524 of the Sports Act and Section 8.7(1) of the USOC Bylaws.

### **RELIEF SOUGHT**

*Wherefore*, by reason of the foregoing and the Grievance previously filed, Claimants respectfully request that the USOC appoint a Hearing Panel; and that the Hearing Panel, after providing USS with fair notice and an opportunity to be heard, make the following findings and recommendations to the USOC Board of Directors:

#### **A. PROPOSED FINDINGS OF FACT:**

- (1) A FINDING THAT USS LACKS THE FINANCIAL CAPABILITY REQUIRED OF NGBs BY SECTION 220522(a)(2) OF THE SPORTS ACT;
- (2) A FINDING THAT USS LACKS THE MANAGERIAL CAPABILITY REQUIRED OF NGBs BY SECTION 220522(a)(2) OF THE SPORTS ACT;
- (3) A FINDING THAT USS HAS A FAILED AND INEFFECTIVE GRIEVANCE PROCESS WHICH DOES NOT PROVIDE FOR THE PROMPT AND EQUITABLE RESOLUTION OF GRIEVANCES OF ITS MEMBERS IN VIOLATION OF SECTION 220522(a)(11) OF THE SPORTS ACT; and
- (4) A FINDING THAT USS FAILS TO COMMUNICATE EFFECTIVELY WITH ITS MEMBERS AND LACKS THE MANAGERIAL AND FINANCIAL TRANSPARENCY REQUIRED BY SECTION 220524 OF THE SPORTS ACT AND SECTION 8.7(1) OF THE USOC BYLAWS.

#### **B. PROPOSED RECOMMENDATIONS OF THE HEARING PANEL TO THE USOC BOARD OF DIRECTORS**

*Wherefore*, by reason of the foregoing, and the Grievance previously filed, Claimants respectfully request the following:

- (1) That a USOC Hearing Panel, after providing USS with fair notice and an opportunity to be heard, recommend to the USOC Board of Directors that USS be put on "probation" pursuant to Section 10 of the Bylaws of the USOC and that USS be required to operate under the close supervision of the USOC until such time as a new USS Board

of Directors can be named (which includes “independent directors”) and the USOC determines that the new Board can effectively set policy and hire a new CEO who will competently manage the NGB in accordance with the policies set by the Board and in full compliance with applicable Federal and state laws, the USOC Bylaws and USOC Governance Guidelines; and

(2) An Order directing that USS refund the filing fee in the amount of \$250.00 previously paid to USS in connection with the filing of the August 30, 2012 Grievance for a grievance hearing which was never had; and

(3) That the USOC Hearing Panel Order such other and different relief as the Hearing Panel may determine is just and appropriate under the circumstances.

Dated: New York, New York,  
March 5, 2013

Respectfully submitted,

STEWART OCCHIPINTI LLP

By: Edward G. Williams

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Attorneys for Claimants

**EXHIBIT TO SECTION 10 COMPLAINT**

**GRIEVANCE FILED WITH  
US SPEEDSKATING  
on August 30, 2012**

***BEFORE THE US SPEEDSKATING  
GRIEVANCE COMMITTEE***

**ATHLETES' GRIEVANCE PURSUANT TO  
US SPEEDSKATING BYLAW ARTICLE XVIII**

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**I. THE PARTIES TO THIS GRIEVANCE:**

**CLAIMANTS:**

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Mr. Christopher Kyle Carr  
9293 South Hartford Park Ave.  
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Ms. Alyson Dudek  
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Ms. Emily Scott  
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Mr. Jeff Simon  
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**Claimants' authorized representative:**

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**RESPONDENT: US SPEEDSKATING**

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Tele: (801) 417-5360  
Fax: (801) 417-5361

Attn. Mr. Mark Greenwald, CEO /Executive Director  
Email: mgreenwald@usspeedskating.org

**II. JURISDICTION**

The Grievance Committee has jurisdiction to consider and rule on this grievance (“Grievance”) brought by the above named Claimants, each a member of US Speedskating, (hereinafter “USS”), pursuant to Article XVIII, Section 18.1 (iii) and (iv) of the Bylaws of USS. Accompanying this Grievance is a check made payable to USS in the amount of \$ 250.00 for the filing fee required pursuant to Section 18.3(vii) of the USS Bylaws.

### **III. SUMMARY OF ALLEGATIONS**

As set forth in more detail below, Claimants respectfully allege:

(1) violations by USS of the membership requirements of the Ted Stevens Olympic and Amateur Sports Act, Title 36 United States Code, Section 220501, *et seq.* (the “Sports Act”) for sports organizations seeking continued recognition as a National Governing Body (“NGB”) by the United States Olympic Committee (the “USOC”);

(2) violations by USS of the USOC Bylaws applicable to NGBs;

(3) violations by USS of its own Bylaws;

(4) instances where USS Bylaws violate the Sports Act and / or USOC Bylaws;

(5) violations by officers, directors and coaches of USS Conflicts of Interest Policies;

(5) violations by officers, directors and coaches of the USS Code of Conduct;

(7) violations by USS coaches of the Coaching Ethics Code;

(8) the filing of false statements by USS in its Form 990s filed with the IRS; and

(9) violations by USS of the USOC Governance Guidelines for NGBs.

### **IV. INTRODUCTION:**

4.1 Although USS is presently recognized by the USOC as the NGB for the sport of speedskating in the United States, USS, in fact and in reality, is no longer eligible to be so recognized. The reason is because USS does not fulfill, and has not for some years fulfilled (if ever), the obligations for recognition of sports organization as an NGB as enumerated in (and required by) the Sports Act. In addition, USS does not fulfill the requirements (and is in violation of) the Bylaws of the USOC applicable to NGBs; its own Bylaws; the USOC’s Governance Guidelines; the Coaching Ethics Code; and its own Conflicts of Interest Policies in very material respects.

4.2 Before, however, delving into USS's non-compliance with the Sports Act, USOC Bylaws, USOC Governance Guidelines, etc., we wish to address the critical matter of the athletes' health and safety, on account of the abuses heaped upon them by USS's coaches.

4.3 A number of USS officers, directors and staff have been aware of this abuse for some time. Because of USS's failure and neglect to stop these abuses, and take action under USS's disciplinary or appropriate employment procedures against these abuses, Claimants now make this a matter of public record by the filing of this Grievance.

**USS HAS PUT THE HEALTH AND SAFETY OF ATHLETES AT RISK**

4.4 USS athletes have been physically and psychologically abused by USS Coaches.

4.5 USS, although aware of this abuse, has failed, and continues to fail, to protect the health and safety of the athletes from the physical and mental abuses of its Coaches.

4.6 These abuses, all violations of the Coaching Ethics Code, have resulted (and continue to result) in serious physical and psychological harm to the athletes. (See Section XI, below, for details).

4.7 Notwithstanding the fact that these serious abuses occur in the very same building (the Utah Olympic Oval) where the USS has its offices, and in some instances occurred in the presence of USS staff, and the additional fact that the skaters and parents have been ringing the alarm bells for months with USS Board members, officers and staff about the abuse, USS has taken no disciplinary action against the abusers.

4.8 Only last week, on August 23, 2012, did lawyers from a large international law firm, White & Case, out of its New York City office, contact counsel for the Claimants to advise that

they had been asked by USS, through the USOC, to conduct an “investigation” of the coaches’ abuse of athletes.

**4.9** White & Case advised it would do its investigation of the “alleged” abuses on a *pro bono* basis, and make its findings known to USS.

**4.10** The athletes who are Claimants to this Grievance, through their counsel, welcome, and wish to fully cooperate with White & Case’s “investigation” of the abuses which Officers and members of the Board of USS, as well as the CEO/Executive Director and other staff already know about.

**4.11** In that regard, Counsel for Claimants has turned over to USS’s investigative team of lawyers from White & Case, a detailed summary prepared by Claimants’ counsel of the abuses heaped upon the athletes by USS Coaches.

**4.12** This summary report prepared by Claimants’ counsel also “names names” of those within USS who, upon information and belief, personally witnessed the abuses, and/or have knowledge of the abuses because the athletes, and others, reported the abuses to them.

**4.13** Hopefully, USS’s lawyers from White & Case, now armed with this specific information provided by the Claimants, will immediately become involved and accomplish what the athletes and their parents have been unable to achieve thus far: that is, the immediate cessation of the Coaches’ abuse and violation of the Coaching Ethics Code, and the establishment of a “Safe Sport” training atmosphere within the sport.

**4.14** Claimants are also hopeful that the abusers, and those others in USS who failed to act, notwithstanding knowledge of the abuses, will face disciplinary (and, in the case of the abusers, employment) action by USS, consistent with the due process requirements of the Sports Act, the USOC “Due Process Checklist,” and settled principles of employment law.

4.15 In that regard, and at an appropriate time and place (and in the presence of their counsel), Claimants (or at least some of them) will make themselves available to be interviewed by counsel for USS, should that become necessary, to further substantiate the abuses which a number of USS officers, directors, the CEO and other USS staff already have knowledge of..

**FAILURE OF USS TO BE “BOARD GOVERNED”**

4.16 USS is not “Board Governed” and, for that reason and others (such as that USS is not “staff-managed either), USS lacks the managerial capability to plan and execute its obligations as an NGB.

4.17 The USS Board, as a Board, for the most part, neglects its obligation and responsibility to set policy for USS staff to carry out, and to do the strategic planning necessary to be a successful NGB.

4.18 Instead, the USS Board defers, without proper authority and oversight, to self-perpetuating “insiders” with undefined (but seemingly absolute power); a myriad of some 15 committees, with overlapping authority; two “Activity Managers” (who, by authority of the Bylaws, are “fully authorized to conduct their activities”); and, more recently, the Head Coach, who is one of the principal abusers.

4.19 The several all-powerful “insiders,” who recycle themselves in and out of various positions of authority, sometimes with title and sometimes without, have as their primary objective the retention of their own positions of authority, which they use to run the day-to-day functioning of USS (contrary to the mandate of the Bylaws granting that authority to the CEO/Executive Director) and to propel themselves to positions of authority in the International Skating Union (“ISU”).

**4.20** The USS Board of Directors, rather than setting policy and determining strategies for fund-raising and the long term advancement of the sport in the United States, simply disregard their policy-making responsibilities and rely on the expected annual largesse of the USOC for funding.

**4.21** This failure of Board governance, together with the failure / inability of the CEO/Executive Director to be permitted to and/or assert managerial authority, in deference to certain “insiders” and a myriad of committee and “activity managers” renders USS incapable of planning and executing its obligations as an NGB.

**4.22** The failure of USS to be a “Board governed” organization is a violation of Section 2220522(a)(2) of the Sports Act and also constitutes a violation of a key requirement of the USOC Governance Guidelines, discussed *infra*, commencing at page 42.

#### **FAILURE OF USS TO BE “STAFF MANAGED”**

**4.23** Notwithstanding the laudable (and correct) mandate in the USS Bylaws that the USS is to be Board-Governed and Staff Managed (see USS Bylaw Article V, Sections 5.1 and 5.7), the CEO/ Executive Director has no real authority.

**4.24** The CEO/Executive Director has admitted this to athletes.

**4.25** Instead, the real authority within USS, as set forth above, lies with those several self anointed, and self-perpetuating “insiders” who, at some times are Board members, other times are officers, still other times are paid staff and finally, and most perplexing, are decision-makers without title or identifiable portfolio, but known to all except the most naïve and uninformed within USS, to have the authority to make ultimate decisions (including which athletes “make the team”) virtually unchecked by any meaningful Board oversight.

**4.26** Added to the CEO's challenge to actually manage USS, are the huge number of USS committees (15 at last count) each with their apparent overlapping authority over aspects of the organization. Throw into this bouillabaisse the micro-managing "insiders" and 15 Committee chairs (each of whom sees themselves in charge of a particular area), the USS Bylaw-authorized "Activity Managers" (one for Long Track and one for Short Track), and the Head Coach, and you have given the CEO/Executive Director an impossible job. . Curiously, the two "Activity Managers," by mandate of the Bylaws, are "fully authorized to conduct their activities"); but, at the same time, what they have supreme authority over is clear as mud ("authorized to conduct the activities in their areas.")

**4.27** But wait, hold on! There's more. We now also have (or until recently had) - - upon information and belief - - a non-Board authorized contract entered into by Mr. Jack Mortell and Fred Benjamin, Esq. (on behalf of USS) with coach Jae Su Chun, making Jae Su, in effect, the Commander-in-Chief, over even the now mostly non-existent Director of High Performance, to whom Jae Su and the other abusing coaches previously reported !

**4.28** The result is that USS now has (and pays dearly) a CEO/Executive Director who lacks any clear authority "to manage a staff-driven" NGB. (See, USS Bylaw, Article V, Section 5.7).

**4.29** Perhaps the fact that the CEO/Executive Director lacks any real authority is the reason why he is so rarely in his office at the Utah Olympic Oval, as opposed to his home in Canada. He is not needed to manage the staff since, upon information and belief, authority over staff was given to Coach Jae Su, who even assumed the responsibilities of the High Performance Director, (the person who is supposed to oversee coaching staff.) Thus, we now have a situation where the abuser has supervisory authority over himself !



**4.30** Also frequently absent (thereby giving Coach Jae Su even greater leave to do whatever he wants to do, without check) are the “Director of Sport,” Bryce Holbech (who “commutes” to his job at the Olympic Oval from Canada) and Finn Halverson, a HP Director (who commutes from Norway).

**4.31** The failure of USS to be a “staff-managed” organization is a violation of Section 2220522(a)(2) of the Sports Act and, in addition, constitutes a violation of a key requirement of the USOC Governance Guidelines, discussed *infra*, commencing at page 42.

#### **FAILURE TO PROVIDE SUFFICIENT FUNDING FOR ATHLETES**

**4.32** USS states that its mission is to be the best NGB in the world, and that that includes providing financial support for its athletes.

**4.33** A common complaint of the athletes, and noted by long time observers of the sport, is the failure of USS to direct adequate funds in its budget to direct (and even indirect) athlete support.

**4.34** Athletes are invited/asked to join the National Racing Program (the “NRP”), but when they accept and do travel to Salt Lake City to participate in the program, they find that they are not provided enough (sometimes no) funds to survive.

**4.35** But there is a “Catch-22” here: Athletes are expected to be train 8 hours a day (see USS’s “Life in the Day of an Athlete,” below); are not given enough funds to live (even very modestly); and are not given enough time off to have a job, even if part-time jobs were readily available, which they are not (and which USS does nothing to assist athletes to find)

**4.36** Athletes inquire about the lack of funding, and what, in effect, is the “starvation diet” USS puts them on. One response (there are others, noted below) is the very unhelpful

explanation that: “There is no money,” even though the athletes, at the same time, make note that USS goes “over budget” on things that do not involve athlete support.

**4.37** The failure of USS to provide even a modest amount of funds to athletes who commit to join the USS “National Racing Program” at the invitation of USS, is not only an affront to these young athletes and their parents, but is also a violation of Section 220522(a)( 2) of the Sports Act, and USS’s very own mission and Bylaws.

### **USS’S FALSE ADVERTISING TO THE PUBLIC**

**4.38** USS, in connection with its fund-raising efforts, knowingly and falsely conveys to the public the amount and type of support it provides to athletes participating in the National Racing Program.

**4.38** For example, here is what USS says on its website:

### **HELP OUR ATHLETES ON THE ROAD TO SOCHI**

They’re on the ice every morning by 8:00 a.m.

Time on the ice is followed by time in the gym, lifting, endless squats, riding the bike.

And then they’re back on the ice again.

Supported by coaches, training staff, nutritionists and, of course, parents.

This is a day in the life of a speedskating athlete.

They are focused, dedicated and disciplined. And they have big skates to fill...names like Heiden, Blair and Jansen. But they can’t do it alone. It takes a Nation to support a future Olympian. Join Speedskater Nation and help the US Speedskaters bring home the gold in 2014.

Your tax deductible contribution will also help support thousands of aspiring Olympians follow their dream.

Join our team!

## **DONATE NOW**

4.40 But nowhere does this “Day in the Life of a Skater” mention the skaters scurrying off the rink in between practices to part – time jobs so they can try to live at a subsistence level since USS has now stopped funding the National Team that the public, in this advertisement, is asked to support.

4.41 Nowhere does this “Day in the Life of a Skater” mention the water bottles, three-ring binders and insults hurled at the skaters by their “nurturing” coaches;

4.42 Nowhere does this “Day in the Life of a Skater” mention the repeated threats of Code of Conduct violations, and even lawsuits, if the athletes do not agree to what USS demands of them.

4.43 Claimants cannot cite to any specific Section in the Sports Act or USOC Bylaws (or even USS Bylaw) that USS has violated by this false advertising. The best Claimants can come up with is the Eighth, and perhaps the Ninth, Commandments.

#### **ARBITRARY FUNDING AND SELECTION DECISIONS**

4.44 Athlete funding and team selection decisions by USS (actually, not by “USS” or the CEO, but rather now apparently the Head Coach)) are arbitrary and capricious, and not consistent with any published criteria (which, more often than not, does not exist)

4.45 When athletes complain about these arbitrary decisions, there is no explanation given. Instead athletes are simply told to file a Grievance (which, by the way, requires a \$250 filing fee, which is *more* than what a discretionary invite to the National Team makes in a *month!*)

4.46 Such Grievances go nowhere. The reason Grievances go nowhere is because under the USS Grievance Procedures, the President of USS is granted the authority to, and does, dismiss Grievances if he finds, on his own, and without any process, that the Grievance “does

not have sufficient merit to warrant further action.” (See USS Bylaw Article XVIII at Section 18,1A)

4.47 A variation to the “Go file a Grievance” response to athletes’ complaints concerning the lack of funding provided “National” team members, is the well-known (and most likely now greatly-regretted) heart-warming and sensitive response by the CEO / Executive Director, which was; “if you don’t like what USS is providing you, just leave and we will find someone else to take your place.”

4.48 The lack of appropriate funding for “National” team members, and the abusive attitude toward athletes by some staff (and of course, all three short – track coaches) constitutes a violation of Section 220522(a)(2) of the Sports Act.

#### **FAILURE OF USS TO PAY FOR MEDICAL EXPENSES**

4.49 When an athlete in USS’s “National Program” gets physically or emotionally sick, or injured (more often than not on account of the “training techniques” of the abusive coaches), funding is withdrawn, and USS refuses to take responsibility for the medical expenses involved.

4.50 The failure of USS to provide (or reimburse) medical expenses for National Team members who are injured “on the job” (including as a result of USS Coaching’ abuse), is not only a violation of Section 220522(a)(2) of the Sports Act, but is also is a violation of USS’s very own mission and Bylaws

#### **FAILURE OF USS TO REASONABLY REFLECT THE VIEWS OF ATHLETES**

4.51 Attempted input from athletes to staff and the Board is disregarded and dismissed by a “Father Knows Best” attitude.

**4.52** The voice of the Elite Athlete Reps on the Board is not seriously considered or taken into account.

**4.53** Athletes on USS “Designated Committees” (where there is such representation, which is not always, as mandated by USOC Bylaw Section 8.8.1) are given short shrift. If athletes are consulted (such as with respect to the High Performance Plan), they are consulted only after the development of the proposal - - after the fact - - and not even even afforded the dignity of a face to face, meeting but instead are relegated to a hurried telephone call or two so USS can claim to the USOC (wrongly, we submit) that USS sought and obtained athlete input.

**4.54** Such athlete “input” (required by the Sports Act and USOC Bylaws) is not, and is not intended by USS to be, meaningful.

**4.55** In short, USS purposefully does not seek, encourage, provide for, or obtain meaningful athlete input, in violation of Section 220524(3) of the Sports Act and USOC Bylaw Section 8.8.

#### **USS FAILS TO KEEP ATHLETES INFORMED**

**4.56** USS has always lacked transparency in its operations, decision making and reporting to members.

**4.57** While the lack of transparency to its membership cannot be condoned, and is itself a violation of Section 8.7(1) of the USOC Bylaws), one might perhaps think/hope that USS would at least keep its elite athletes training at Salt Lake City informed as to what was going on.

**4.58** That thought/hope would be wrong.

**4.59** To USS, Athletes are USS’s human equivalent of mushrooms.

**4.60** Athletes, particularly athletes on the National Racing Program, have repeatedly asked USS staff for information about funding, scheduling, support for travel (like, for example,

“will there ever be any???) , and information about other policy matters directly affecting their well-being and racing.

**4.61** USS staff almost always denies having the information requested.

**4.62** These inquiries by athletes are then passed on to Board members who also have no answers to critical questions concerning matters central to the athletes’ immediate well being or longer term financial support needs.

**4.63** The failure, refusal and / or inability of USS to answer questions athletes have concerning their day-to-day needs, as well as to answer questions concerning longer term policy matters, constitutes a violation of Section 220524(3) of the Sports Act.

#### **THE “USS ATHLETE AGREEMENT”**

**4.64** The USS Athlete “Agreement” is not an “agreement,” but rather is a contract of adhesion, and therefore unenforceable, except by USS in its repeated threats to athletes to agree to its terms or face a Code of Conduct violation, or worse, a lawsuit (“yes” that has happened too!)

**4.65** The athletes’ “Agreement” is not an ‘agreement’ at all. Rather, it is a 12 page directive (not counting Exhibits “A” through “F”) written by USS and its attorneys, without any meaningful athlete input, setting forth what the athletes “shall” do for USS in exchange of what the USS “may” do for the athletes.

**4.66** The thought that an NGB would find it necessary, in furtherance of its mission “to assist athletes,” to compel athletes to sign a supposedly legally enforceable document to get the athletes to do its bidding, is ridiculous on its face. Does any right-minded person think this is a reasonable way to run an NGB?

4.67 The so called “USS Athlete Agreement” is also of no legal effect because it lacks any meaningful consideration.

4.68 But if this misguided attempt by USS to use the law to get its way, or get rid of athletes who refuse to sign the athlete “agreement” or who supposedly do not comply with the one-sided terms of the “agreement” was not enough to get your attention, it gets even worse.

4.69 More recently, a USS official (who happens also to be lawyer who claims, in his legal advertisements, to be the third-largest grossing personal injury lawyer in Chicago, has attempted to quash dissent and criticism by hiring another law firm to threaten the filing of a defamation lawsuit against a former USS competitor.

4.70 Such heavy-handed intimidation, which carries the implicit threat to all USS athletes that they may be sued if they complain, does not engender a pleasant training atmosphere for athletes, and constitutes a violation of the Sports Act.

#### **USS’s THREATS OF SANCTIONS AND LAWSUITS TO CURB DISSENT**

4.71 USS officials have discouraged dissent and criticism by athletes by:

- a) denying complaining athletes funding;
- b) denying complaining athletes enrollment in USS-sponsored programs;
- c) denying complaining athletes insurance coverage or expenses for medical treatment for necessary medical treatment for injuries incurred during training, including those injuries which have resulted from the abuse of coaches;
- d) threatening athletes with “Code of Conduct” violations (to be “given out like candy”) if they do not conform to the wishes of USS;

e) threatening athletes with legal action if they do not sign the so-called Athlete Agreement; and

f) threatening a former USS competitor with a defamation lawsuit for publishing her opinion that a certain USS official acted with conflicts of interest (notwithstanding, the fact that an independent investigation commissioned by the USOC concluded that said USS should have recused himself from involvement in the matter to avoid a conflict of interest).

**4.72** More recently, on August 27, 2012, the CEO/Executive Director of USS, upset with a skater who had “opted out” of USS’s abusive program, in favor of training on his own with the FAST club, stated to FAST coaches that he was “going to hand out Code of Conduct violations like candy.”

**4.73** These actions, including the immature and reactive threats of the CEO/Executive Director, all/each constitute violations of the USS Code of Conduct.

#### **LACK OF FINANCIAL CAPABILITY**

**4.74** Reference has already made to the failure of the USS Board to concentrate on one of the most important and fundamental responsibilities of an NGB: that is, making policy decisions and developing strategic plans to raise money to support the athlete programs (and athletes) needed to produce winners at International competitions.

**4.75** This failure bears repeating: The USS Board has failed utterly in its responsibility to develop and direct the implementation of significant fund-raising strategies; and USS lacks the financial capability to carry plan and execute its obligations as an NGB.

**4.76** Not only that, upon information and belief, the members of the USS Board of Directors have also failed to make any significant personal contributions to USS’s coffers.



4.77 In most Not-for-Profit organizations, including NGBs, it is understood (and expected) that being a member of the Board of Directors carries a price tag.

4.78 Not so, apparently, with USS.

4.79 Upon information and belief, no member of the USS Board of Directors makes a meaningful financial contribution to USS. (Board members misconstrue their contribution as “sweat equity,” which -- in accordance with the USOC Governance Guidelines -- is neither a welcomed nor expected role of a Board member). But, board members are to develop and determine policy - - not get immersed in the day-to-day management of the NGB, which is the responsibility of the CEO/Executive Director.

4.80 Quite remarkably, and indicative of the organization’s misplaced sense of the role of the Board, the membership dues for members of the Board of Directors *is discounted* from the amount of dues an active athlete is required to pay.

4.81 The thought that USS Board members get a *reduction* in their dues is obnoxious, in itself, but even more so when it is considered that in many instances, full-dues paying elite athletes are required to self-fund their travel and expenses to important competitions.

4.82 Below are some interesting numbers:

**FUNDS RECEIVED FROM THE USOC:**

2008 .....	\$2,353,700
2009.....	\$ 2,295,000
2010.....	\$ 2,590,000
2011.....	\$ 2,661,075

**NUMBERS FROM USS's FORM 990s:**

**2008 Form 990 (FYE May 31, 2009)**

Prof fees and "other" \$ 454,044

Athlete Stipends \$ 248,401

**2009 Form 990 (FYE May 31, 2010)**

Prof fees and "other" \$ 669,334

Athlete Stipends \$ 363,356

**2010 Form 990 (FYE May 31, 2011)**

Prof fees and "other" \$ 398,880

Athlete Stipends \$ 137,522

Given USS' mission and the generally increasing amount of funding USS receives from the USOC (supposedly to support athletes and athlete programs), the amounts provided to athletes in the form of stipends seems out of whack.

Of particular interest is the fact that USS "saved" over \$125,000 from FY Ending May 31, 2010 to FY Ending May 31, 2011, by cutting back on athlete stipends in that amount.

**4.83** The failure and neglect of the USS Board to accept and assume its mandated obligation and responsibility to raise money to support the mission of USS, as opposed to simply relying year after year on the largesse of the USOC, constitutes a violation of Section 220522(a)(2) of the Sports Act, and a requirement of the USOC Governance Guidelines.

## **LACK OF TRANSPARENCY**

**4.84** In order to mask its failures and mismanagement from the athletes, its general membership and indeed, the public at large, USS largely operates in a non-transparent manner.

**4.85** For example, USS fails and neglects, contrary to its own Bylaws, to post minutes of its Board of Directors meetings on its website; and, until very recently, USS:

- a) failed and neglected, contrary to its bylaws and repeated requests from the USOC, to post its Federal 990s on its website; and
- b) failed and neglected, contrary to its bylaws and repeated requests from the USOC, to post its audited financials on its website.

**4.86** Upon information and belief, “insiders” of USS, without appropriate authorization of the Board, make policy decisions which should be reserved for Board decision, and enter into contracts with individuals who unwittingly believe that these “insiders” have the authority to enter into such contracts when, in fact, they do not. These policy decisions and contracts are not discussed at Board meetings, at least in open forum, and are not recorded in minutes of any Board meetings.

**4.87** The conduct by USS of its business under a veil of secrecy, in contravention of the Sports Act and USOC Bylaws, permits USS to shield its decisions and finances from any critical inspection from those who have a direct interest in knowing (and evaluating) how USS is carrying out its responsibilities as an NGB.

**4.88** And to further compound this egregious violation of the Sports Act’s non-delegation provision, the USOC Bylaws and even USS’s own Bylaws, USS files false and fraudulent Form 990’s with the Federal Government, overstating its assets, and which Form

990s also falsely represent that USS conducts its business in a transparent manner when, in fact, it does not.

**4.89** The failure of USS to be financially and operationally transparent and accountable to its members and to the USOC, constitutes a violation of the Bylaws of the USOC and of the USOC Governance Guidelines.

**THE ATHLETES HAVE REPEATEDLY COMPLAINED TO USS**

**4.90** USS athletes, for years, have complained about the USS's failures and shortcomings as an NGB, including (but not limited to) the following:

a) the arbitrary and capricious nature of decisions by Board members, officials and coaches including, but not limited to, the manner in which athletes are selected to teams; provided travel expenses and medical support; and given access to "ice time" and coaches;

b) the failure of USS to take into account the voice of the athletes in its decision-making process;

c) the failure of USS to adequately support, in a financial way, the efforts of its athletes;

d) the harsh, demeaning and hurtful (including, in a physical) way some USS coaches treat "their" athletes;

e) the failure of USS to provide "safe training" environment for female athletes, free of sex-based negative comments which constitutes sexual harassment and negatively affects the individual's self-image;

f) the lack of effective procedures within USS for the prompt and equitable resolution of Grievances of athletes and other members; and

g) the subjective and arbitrary nature of criteria (or lack of criteria) used by USS and its coaches to select athletes to:

- (i) receive USS financial support (limited as it is);
- (ii) participate in national programs and international competitions; and
- (iii) to nominate athletes to the USOC to participate in the Olympics

**4.91** Indeed, athletes have not been alone in noting the shortcomings of USS with respect to its selection criteria.

**4.92** A highly regarded independent arbitrator, selected by the American Arbitration Association, criticized USS for its poorly-written selection criteria and, for that reason, imposed the financial costs of arbitration on USS. However, because USS had no money at that time, it took months and months for USS to comply with the arbitrator's monetary Order. The AAA Arbitrator stated:

The presentation of [USS] Eligibility Rules could be improved....  
Going forward, when dealing with issues as important as  
qualification standards and changes therein, ... USS should  
display and explain the changes more proximately on its website  
and take greater steps to inform athletes and their coaches.

David W. Rivkin, Esq., AAA Case # 77 190 00553 09 (Vogel vs.  
US Speedskating), dated January 15, 2010.

**4.93** Unfortunately, USS has not taken the direction of this AAA arbitrator to heart with respect to team selection criteria, eligibility for funding, and other matters of key interest to athletes. USS, through its coaches and administrators, continues to deal with its athletes with a lack of clarity and directness, essentially relegating the athletes to fend for themselves in a sea of darkness and uncertainty. This is not only a violation of USS's obligations as an NGB, it is unacceptable when measured against any reasonable standard.

## IN SUM

**4.94** For the aforementioned reasons and others, the Claimants herein file this Grievance with USS respect to the physical and psychological abuses inflicted on USS athletes by USS coaches, the knowing failure of USS to stop those abuses, and USS's other serious and unchecked violations of the Sports Act, the USOC Bylaws, the USOC's Governance Guidelines and, indeed, the USS's own Bylaws as well as its Conflicts of Interest Policies.

**4.95** If USS does not promptly take steps to provide a safe training environment for USS athletes, and to satisfy the requirements of the Sports Act for NGBs, together with the requirements of the USOC's Bylaws and other directives of the USOC, the USS Code of Conduct, and its Conflicts of Interest Policy, Claimants will pursue remedies available to them under the Sports Act and USOC Bylaws to compel such compliance.

**4.96** Claimants will also consider, if USS fails and neglects to take prompt and decisive action against the wrongdoers, including those within USS who knowingly permitted the abuses to continue, pursuing such other and different remedies available to them in other legal forums, for harms already inflicted.

## **V. SPECIFIC VIOLATIONS OF THE TED STEVENS SPORTS ACT:**

**5.1** The allegations set forth in Section IV above, and Sections VI through XIII below, are incorporated by reference as if fully set forth at length herein.

**5.2** USS fails to comply with at least the following sections of the Sports Act, which are required to be met for USS to continue to be recognized as as an NGB by the USOC:

**§220522(a)(2):** USS has neither the managerial and financial capability to plan and execute its obligations as an NGB;

**§220522(a)(5):** The USS Board of Directors does not independently decide and control all matters central to the governance of USS, but instead improperly delegates to certain individuals (but not the CEO/Executive Director) the authority to make such decisions, unchecked by Board review or restraint;

**§220522(a)(8):** USS fails to provide for an equal opportunity to athletes to participate in speedskating, without discrimination based on sex; and USS also violates this section of the Act by denying (or threatening to deny) athletes the opportunity to compete without fair notice or an opportunity for a hearing;

**§220522(a)(9):** USS fails to provide for the reasonable representation of females on its board of directors;

**§220522(a)(8)** USS, on account of its Coaches' particularly abusive conduct towards women with respect to being allegedly being "fat" overweight" and "disgusting," fails to provide an equal opportunity to amateur athletes to participate in speedskating competitions and the programs offered by USS without discrimination based on sex:

**§220522(a)(13):** USS fails to provide procedures for the prompt and equitable resolution of grievances of its members;

**§220522(a)(15):** USS does not meet the obligations imposed upon it by Section 220524 of the Sports Act;

**Section 220524(3)** USS fails to keep speedskating athletes informed of policy matters and it fails to reasonably reflect the views of the athletes in its policy decisions as required by of the Act;

**Section 220524(6)** USS also fails to provide for equitable support and encouragement for the participation by women in speedskating in the United States, as required by the Act.

**5.3** As a result of the foregoing violations of the Sports Act, USS has forfeited the privilege, granted by the USOC, to continue to be recognized as the NGB for the sport of speedskating in the United States.

## **VI. VIOLATIONS OF USOC BYLAWS:**

**6.1 Section 8.7 (a) of the USOC Bylaws** provides that in order for an NGB to be

considered in good standing, the NGB “shall... fulfill its responsibilities as an NGB... as set forth in the [Sports] Act.” As alleged above and set forth below, USS does not fulfill its responsibilities as an NGB as required by Sections 220522 and 220524 of the Sports Act.

**6.2** In addition to the foregoing, USS fails to comply with the following additional USOC Bylaws:

**Section 8.7(k):** requires USS to actively seek, in good faith, to generate revenues, in addition to any resources which may be provided by the USOC, sufficient to achieve financial sustainability and support USS athletes. USS fails to comply with this requirement. And in those instances where it has obtained a sponsor, USS has failed to keep it. For example, USS lost an important sponsorship on account of its mismanagement of the sponsor, including USS’S failure to consult with the athletes prior to making commitments to the sponsor. When USS could not deliver on its obligations under the sponsorship contract (largely on account of its failure to consult with the athletes prior to making the commitment to the sponsor), USS lost the sponsorship.

**Section 8.7(l):** requires USS to be financially and operationally transparent and accountable to its members and to the USOC. USS fails to comply with this requirement. Not only has USS failed and neglected until very recently to post its 990’s and other financials on its website as required in this USOC Bylaw (discussed below), USS fails to prepare the minutes of its Board and other meetings in a timely fashion or make generally known to interested persons other Board decisions.



**Section 8.7(q) and (r):** requires USS to post on its website its IRS Form 990s and audited financials for the three most recent years. USS still fails to meet this requirement notwithstanding repeated requests from the USOC staff that it remedy this serious deficiency. (USS recently posted two years of Form 990s, not the required three). This USOC Bylaw violation also speaks of USS's lack of transparency (see above) also makes it impossible for the membership of the USS, including its athletes, its general membership, to know of USS's financial situation and hold its officers and directors accountable.

**Section 8.8.1:** pertains to athlete representation on the USS Board of Directors and Committees including "Designated Committees." USS, through its neglect and lack of concern of athlete input, fails and neglects to provide for, and ensure, meaningful athlete attendance and input on its Board and committees, as required by this USOC Bylaw.

## **VII. VIOLATIONS BY USS OF ITS OWN BYLAWS:**

**7.1** USS has a history of being in violation of its own Bylaws, including the following:

- a. **Article III, Section 3.1** ("purposes") USS fails to comply with its stated purpose to comply with the Sports Act and USOC Bylaws, in particular, subsections C, F, G, I, L, M, N and S;
- b. **Article IV, Section 4.4.1 A** (failure to have an "Elite Athletes' Council) as provided in this Bylaw); **4.6** (failure to have an actual Annual meeting of membership as called for in this Bylaw at the time the Board has its so-called "annual" meeting in the Spring))

- c. **Article V, Sections 5.1** (as to governance); **5.2** (as to representation of females on the Board); **5.4** (as to the number of directors on the Board); **5.5** (as to the composition of members of the Board); **5.7** (as to Governance and the allocation of duties between the Board and staff; see also section 5.1); **5.8** (conflict between approval by a less than unanimous vote of directors in a mailed vote vs. requirement in Bylaw section **5.17** (“Action Without Meeting” of consent by all board members); **5.10** (USS, upon information and belief, violates this section of the Bylaws by discussing in Executive Session matters that are to be discussed at Board meetings open to members; **5.13** (pertaining to required number of regular Board meetings a year); **5.23** (USS routinely fails and neglects to prepare, let alone publish to interested parties, including members of USS, minutes of meetings within 45 days after the completion of the meeting);
- d. **Article VI, Section 6.7 A** (prohibition against President officiating at any US Speedskating team selection competition); **6.8 A** (failure to follow bylaw re duties of Executive Director - - also referred to in the Bylaws from time to time as the “CEO” of USS - - vis-a- vis the President and Board; see also item “c” *supra*); **6.8 A** (the “appointment” [by whom?] of “Activity Managers,” who are “fully authorized” to “conduct the activities” in the “[undefined] areas designated by the Executive Director and / or the Board of Directors.” completely undermines the powers “empowered” by the USS Board to the CEO/ Executive Director as set forth in Article V, Section 5.1 and 5.7 of the USS Bylaws to “implement the Board’s policies”) *See also,*

**Article VII, Section 7.3.1** (at page 23) which states that the “standing committees . . . shall operate under the jurisdiction and guidance of the Activity Managers” thereby further undercutting the powers granted to the CEO/Executive Director by the Board to “implement the Board’s policies.”

- e. **Article VII, Section 7.2** (failure to have the required 20 % athlete representation on Standing Committees where such athlete representation is required, see **section 7.33**. USS does not comply with its own Bylaw pertaining to the appointment of athletes to such committees); **7.79** (wrongful appointment by the USS Board of Directors of the Athlete Representative to the USS Ethics Committee); **7.11** (reference to responsibilities of Nominating and Governance Committee which, upon information and belief, does not exist)
- f. **Article VIII, Section 8.1** (USS fails to comply with this Bylaw section in that (among other things) it does not require adherence to its Code of Ethics and Conflicts of Interest Policy (“the Code”) by its employees and volunteers (if indeed, such a “Code” exists or was ever “approved by the USOC , as required by Section 8.1 of the Bylaws). In addition, USS fails and neglects to require “each NGB employee and volunteer . . . [to] annually certify compliance with the Code.” NOTE:: upon information and belief, the USS office does not even have a copy of the ”Code” readily available for its employees and volunteers to read and sign; the Executive Director/CEO last reported that it was last somewhere it a USS “storage shed” and requests for a copy to USS counsel have gone unanswered)

- g. **Article XI, Section 11.4** USS (fails to comply with website requirements enumerated in this bylaw section); **11.5** (Upon information and belief, USS fails and neglects to keep the a copy of the records enumerated in this Bylaw section at its principal office, as required by this Bylaw)
- h. **Article XVII, Section 17.1** (as to females); **Section 17.3** (USS , by its CEO / Executive Director, officers, directors, “Activity Managers’ and coaches, threatens to declare athletes ineligible to participate in amateur athletic competition, or the equivalent, without due process as required by 17.3 of USS Bylaw, the Sports Act and the USOC Bylaws; **Section 17. 5** (arbitrary and capricious application of the USS Code of Conduct, without due process; *see also, infra.,*at Section “X”)

**VIII. BYLAWS WHICH VIOLATE THE SPORTS ACT AND/OR USOC BYLAWS**

**8.1** The following Bylaws of USS violate the requirements of the Sports Act and / or USOC Bylaws applicable to NGBs:

- a. **Article VII, Section 7.7.3** (manner of appointment of athlete reps to standing committees);
- b. **Article XVII, Section 17.3** of the USS Bylaws wrongfully permits, as an exception to required due process mandated by the Sports Act, a sanction as imposed by the ISU)
- c. **Article IX** (Pertaining to procedures that USS follows for the election of USS athletes to the USOC Athletes’ Advisory Council (the “AAC”) are

determined by the AAC and not the USOC, as is incorrectly stated in this section of the USS Bylaw)

- d. **Article XVIII** (the USS Disciplinary Process and Appeals Procedures of USS do not provide for the “fair and equitable resolution of disputes” as required by the Sport Act. For example, the President, or his designee, has the authority to dismiss an alleged Code of Conduct violation, filed with USS, *sua sponte*, if he/she determines that the allegations do not have “sufficient merit to warrant “referral to the Grievance Committee. *USS Bylaw 18.1 also grants authority to the President (or his/her designee) at least in matters not involving potential suspension or ineligibility, to “reach a determination on the merits of Code of Conduct allegation, and to impose a penalty if the President, on his own, again without reference to the Grievance Committee, if he or she “finds the allegations to be true.” Furthermore, in “opportunity to participate disputes”, which are referred directly to the “Appeals Commission” the athlete had no right to appeal an adverse decision. The USS Bylaws also permit (indeed, provide for) conflicts of interest in the USS’s administration of the resolution of disputes (including “opportunity to participate “disputes). Remarkably, nowhere does USS, in its Disciplinary / Grievance Rules, even make mention of the absolute right of an athlete, granted to them by Federal law, to bypass the USS Grievance procedures, and to go directly to arbitration before the American Arbitration Association, in “controversies” involving*

their “opportunity to participate in amateur athletic competition.” See Title36 United States Code, Section 220522(a)(4) (b).

- e. The lack of attention that USS gives to its Bylaws is underscored by the fact that USS, from time to time in its Bylaws, makes reference to requirements imposed on it, as an NGB, by the “USOC Constitution” There is no such document.
- f. This is further reinforced by the fact that at some places in the USS Bylaws, reference is made to the “Executive Director” of USS (see, e.g., pages 20, 21 and 26 of the USS Bylaws); while other sections of the USS Bylaws make reference to the “CEO” of USS (e.g., pages 9, 12, 13 and 30).

## **IX. VIOLATIONS OF CONFLICTS OF INTEREST POLICIES**

**9.1** USS does not regard the dissemination or enforcement of its (or any other) Conflicts of Interest Policy, with any degree of seriousness.

**9.2** The USS Bylaws, at Article VIII, Section 8.1, mandates that “Speedskating shall adopt ... an Ethics and Conflicts of Interest Policy” (defined as the “Code”) ... and “each NGB employee and volunteer shall annually certify compliance with the Code.” (Emphasis supplied)

**9.3** Upon asking for a copy of the “Code” of the CEO/Executive Director for a copy of the Code, counsel was advised by the USS Executive Director/CEO that it was not available but must be somewhere in “the storage shed.”

**9.4** Upon information and belief, most USS employees and volunteers do not know the requirements of the Code;

**9.5** Upon information and belief, most USS employees and volunteers are not asked to annually certify their compliance with the Code.

**9.6** Some employees and volunteers (including officers and directors of USS) violate the Code (an commonly understood precepts of honesty, decency and fairness) by knowingly undertaking actions which purposefully result in personal gain; cause institutional loss and embarrassment; undermine the organization's trust and public confidence; engage in actions that involve conflicts of interest, the appearance of conflicts of interest, and violations of USS's Bylaw violations, permit and endorse nepotism; and engage in, permit and tolerate other violations of conflicts of interest.

## **X. VIOLATION OF THE USS CODE OF CONDUCT**

**10.1** USS has adopted a Code of Conduct as mandated at Article XVII, Section 17.5 of its Bylaws.

**10.2** USS Directors, Officers and/or staff (including coaches) engage in and tolerate violations of the Code of Conduct by themselves and by others by:

- a) denying and threatening to deny athletes their right to participate in amateur athletic competition, in violation of the Sports Act;
- b) discriminating against women in violation of the Sports Act, USOC Bylaws and USS Bylaws;
- c) engaging in sexual conduct or advances and/or inappropriate sexually oriented behavior directed to athletes;
- d) providing alcohol to athletes under the age of 21;

- e) engaging in conduct toward athletes which constitutes physical abuse or harm, mental abuse, intimidation, coercion and the threat of physical abuse or harm; and
- f) engaging in acts of deception and / or dishonesty.

10.3. USS staff (including the Executive Director/ CEO), and others, use the threat of lodging a Code of Conduct violation against athletes (including a violation of doing something as undefined as **“an act detrimental to the image or reputation of U.S.Speedskating” (which could result from his or her dismissal from the Team), upon the finding of such a violation by the President of USS** (not a Grievance Committee) as a means to coerce athletes compliance with the unreasonable directives of USS, and/or to stifle complaints of athletes.

10.4 The USS Code of Conduct contains the requirement each athlete must sign (USS warns “Please Read Carefully”) that, as a condition of training/competing, the athlete must agree to “assign, waive and **release all rights and claims for damages, injuries or losses** [the athlete] may have against USS, its officers, coaches, members, representatives,” etc **“in any way related to [the athlete’s] involvement in a U.S. Speedskating activity”** This waiver, required by USS, is unlimited in scope and, as written, would include the negligence (and even gross negligence) of USS, and any of its coaches, who are known by USS to physically and mentally abuse athletes.

10.5 It is submitted that this waiver is against public policy and unenforceable by the Courts, and should be deleted, particularly in view of the known abuses of certain coaches heaped on athletes. USS should not be insulated from its liability to athletes on account of this “waiver and assignment”.



## **XI. VIOLATIONS OF THE COACHING ETHICS CODE**

**11.1** USS coaches have engaged in conduct that violates not only the Coaching Ethics Code, but also any reasonably - minded standards of conduct owed by one human being to another.

**11.2** USS, which knows of these violations of the Coaching Ethics Code, tolerates these violations and does nothing to prevent it.

**11.3** USS knows of the abuse and violations of the Coaching Ethics Code because at least some of abuses were witnessed by USS staff.

**11.4** USS also knows of the abuse and violations of the Coaching Ethics Code because athletes, parents and others have reported the abuse and the violations of the Coaching Ethics Code to USS Officers, Directors and staff, including the USS CEO/Executive Director.

**11.5** USS also knows of these violations USS also knows of these violations because the abuse has gotten so bad that a number of athletes have decided to, and have, boycotted training and practices at the Ice Oval.

**11.6** In an attempt to deflect attention to the reasons for the “athlete boycott,” USS euphemistically states that the athletes have “opted out” of receiving the benefits they could have received as members of the National Racing Program, but without revealing the real cause is that the athletes have “opted out” of being abused, thank you.

**11.7** USS’s response to the known abuses, until a scant few days before the filing of this Grievance, has been to do nothing and ignore the abuses by coaches that USS has knowingly tolerated and permitted for so long.

**11.8** And now, at the 11<sup>th</sup> hour, when faced with the imminent filing of a Grievance,

the USS has sent three lawyers from an international law firm, White & Case (out of its New York City office) to swoop in on two day's notice to Salt Lake City, to "investigate" the abuses that USS already has knowledge of, and to "interview" the already distressed and emotionally scarred Claimant victims of the abuse, without their counsel being present.

**11.9** The violations by USS coaches of the Coaching Ethics Code include acts of physical abuse, acts of verbal abuse, and acts that deny attention and support, such as:

- a) A USS Coach throwing a notebook binder at a skater and then dousing the same athlete with water from a water bottle over his head, in the presence of USS staff and other athletes; and then not speaking to and ignoring the athlete, not only afterwards that day, but into the following week;
- b) A USS Coach screaming insults at skaters, in front of USS staff and other athletes.
- c) A USS Coach verbally attacking athletes personally, by calling them "fat", "worthless" and, at other times, "disgusting"; and using other demeaning and harsh words that could never be deemed to serve a productive training or motivational purpose.
- d) A USS Coach who finds it appropriate to evidence his disapproval of an athlete's performance by screaming, throwing sports equipment, water bottles or chairs at, or in the presence of, athletes; and who exhibits other intemperate and hostile behavior, intended to intimidate the athletes.
- e) Athletes who have trained with a USS Coach have been pushed past the point of "overtraining" to the point where they could barely skate at all, and have suffered injury.

- f) USS Coaches tell athletes who are suffering from injury to resume training without prior clearance from a medical professional.
- g) Doctor's notes concerning injuries have been thrown out and skaters directed by USS Coaches to push through injuries to the point they suffered further injury requiring surgery (the cost of which was not covered by USS); following which the athlete was dropped from the program.
- h) USS Coaches speak to athletes harshly, angrily and in a manner which is demeaning and degrading, such as telling an athlete ( in the presence of other athletes) that "You are the worst skater on this Team."
- i) USS Coaches telling athletes that "You are no good"; "You will never get better"; and "You should go home," all in the presence of USS staff and other athletes.
- j) Athletes are belittled and humiliated, in public, when they do not meet the coaches' expectations.
- k) USS Coaches "assess" athlete performance in an arbitrary and unhelpful way, such as by telling an athlete: "You are terrible." One result of this verbal abuse is that athletes become fearful of training sessions and question the wisdom of their continuing to participate in the Program (therefore, the skaters' boycott.)
- l) A USS Coach includes in his training arsenal the tactic of ignoring athletes for an extended period of time, without explanation.
- m) For example (and this is not an isolated incident), a USS Coach, became angry with an athlete and stopped communicating with her. She was not told

why she was being shunned and ignored After a long period of time, the coach told her he was angry with her for an “unknown reason” (his words).

This was not an apology, but rather a statement.

- n) USS Coaches tell athletes they had to train, even when they were sick and have a scheduled Doctor’s appointment.
- o) USS Coaches believe in the value of “punishment training”, that is, forcing an athlete, when he or she cannot keep up at practice, to remain on the rink after the end of the scheduled practice, and told to skate back and forth, and to do sudden stops, at the whim (blowing of a whistle) of the Coach.
- p) USS Coaches tell athletes, particularly female athletes, that they are “fat” and “disgusting” and that they should “stop eating,” without regard for the nutritional well-being or health of the athlete, the result of which is the athlete develops body-image issues and eating disorders.
- q) As a result of the foregoing, USS Coaches are regarded by the athletes as “manipulative” and “deceitful”.
- r) One athlete wrote:

I personally feel treated like a race horse who has been whipped into training and competing past my capacity thanks to [the coaches] and with USS’s consent. I also feel as though I have been sent to the glue factory many times, but still managed to claw my way back without the help of [the coaches] or USS. I think [the coaches] and USS are corrupt and unethical and I DREAM of a day when they are exposed for their wrong-doings... by the athletes they took advantage of. (Emphasis in original)

#### **11.10** When athletes become injured as a result of the training abuses of USS

Coaches, or when their performances / results drop on account of the abusive training methods of USS Coaches, the Head Coach does not take any responsibility, nor is he held accountable for those injuries or drops of performance.

**11.11** In these circumstances, the Head Coach is simply allowed by USS to bring in a new crop of athletes, to start the cycle all over again, while the injured athletes are dragged off the ice to litter the edge of the Oval (and of course, are dropped from the Program)

**11.12.** These abuses disclose that USS has failed and neglected to do a thorough and proper background investigation of the Coaches prior to hiring them; failed and neglected to instruct or Counsel USS Coaches with respect to the Coaches' Code of Ethics, or to even provide them with a copy of the Coaching Code of Ethics to have and to read.

**11.13** Furthermore, the Head USS Coach is not held accountable by staff, or the Officers or members of the Board of Directors, for his actions. The reason he is not held accountable is because the Head Coach has also been given the authority of the High Performance Director, who previously had authority over the Coaches.

**11.14.** Thus, with the former High Performance Director no longer in place, the Head Coach is now answerable to no one but himself.

**11.15** Because USS has created this structure, and has knowingly permitted the abuse to happen and continue unchecked, USS, as an NGB, is just as guilty as its Coaches, for violations of the Coaching Code of Ethics, in that USS (having been made aware of the abuses by its Coaches) but has failed to address the problem, which pertains to the health and safety of the athletes.

**11.16** The USS Coaches who committed one or more of the above listed abuses are Jae Su Chun, Jun Hyung Yeo and Jimmy Jang (the latter, although perhaps not employed by USS, is nonetheless currently working with the National Racing Program).

**11.17** Current and former USS Staff and officials who, upon information and belief, witnessed, and have personal knowledge of at least some of the above listed abuses include the following: Chris Weaver, Jack Mortell, Shane Domer, Nicole Miller; Clay Weiler (former), Katie Woods (former), Hallie Facey (former), Guy Thibault (former), and Larry Daignault (former),

**11.18** USS staff, officials and Board members to whom the abuses were Reported include the following: Mark Greenwald, Bryce Holbech, and Tom Frank (USS President of the Board), Jack Mortell (former Board member, former officer and committee chair, and ultimate USS insider); Andrew Love (USS Board Member), Susan Sandvig-Shobe (USS Board Member), and Nicole Miller.

## **XII. FALSE FILINGS, MADE UNDER OATH, WITH THE IRS**

**12.1** As required by law, USS averred that its Form 990s filed with the IRS that its contents were “true, correct and complete” under penalties of perjury.

**12.2** The Form 990s filed by USS with the IRS in recent years contain false material misstatements, which were represented under oath to be true.

**12.3** For example, USS wrongfully and fraudulently included assets on its 2008 Form 990 (for the FY ending May 31, 2009) that overstated its assets by \$2,419,567.

**12.4.** This misrepresentation for the year helped to obscure an operating loss for that

year, thereby giving the appearance that USS had a positive amount of surplus net assets or fund balances, when in fact and in reality, USS had a negative amount or deficit net asset or fund balance position, meaning that it had more liabilities than it had assets.

**12.5.** USS's misrepresentation in its 2008 Form 990 hid from its membership, the USOC and the public the fact that USS had an *operating loss USS had for the FY ending May 31, 2009* in the amount of \$587,100, in contrast with the positive balance it misrepresented on the Form 990 for that year

**12.6** USS wrongfully and fraudulently included assets on its 2009 Form 990 (for the FY ending May 31, 2010) that overstated its assets by \$2,476,981.

**12.7** This misrepresentation for the year helped to obscure an operating loss for that year, thereby giving the appearance that USS had a positive amount of surplus net assets or fund balances, when in fact and in reality, USS had a negative amount or deficit net asset or fund balance position, meaning that it had more liabilities than it had assets.

**12.8** USS's misrepresentation in its 2009 Form 990 hid from its membership, the USOC and the public *an operating loss USS had for the FY ending May 31, 2010 in the amount of \$91,905* in contrast with the positive balance USS misrepresented it had on its the Form 990 for that year.

**12.9** USS represented on its 2010 Form 990 that it has a "Whistleblower Policy." On information and belief, USS does not have a "Whistleblower Policy."

**12.10** Claimants' counsel asked USS, as well as its counsel, to be provided a copy of USS's Whistleblower Policy, if any. None has been forthcoming; and there has been no response from counsel for USS to a follow up request.

12.11 Accordingly, Claimants assume, from this non-response, that USS has no “Whistleblower Policy” and that USS’s representation in its 2010 Form 990 that it has such a policy is false.

**XIII. USS’s NON-ADHERENCE WITH USOC GOVERNANCE GUIDELINES:**

13.1 The USOC Board of Directors adopted, in April 2005, a set of “Governance Guidelines” for all NGBs to follow.

13.2 Of particular importance is the USOC Governance Guideline which states:

**“The role of management and the role of governance should be defined clearly, with each NGB being staff managed and board governed.”**

13.3 USS does not comply with this USOC Governance Guideline. Upon information and belief, USS has never complied with this Governance Guideline.

13.4 USS Bylaw Article V, Section 5.1 to the contrary, USS is not “board-governed and staff managed”. The CEO (sometimes referred to in the USS Bylaws as the “Executive Director, *see, e.g.*, Section 6.8 at pg, 20) is not “empowered” to “manage a staff-driven organization.” To the contrary, the CEO/Executive director is largely powerless to “manage” USS. Instead, USS, with its layers of management-empowered “volunteers” denies the CEO/Executive his Bylaw granted responsibility to manage the organization.

13.5 The failure of USS to comply with this Governance Guideline works to the detriment of USS and its athletes.

13.6 Another USOC Governance Guideline requires that:

**“NGBs must be financially and operationally transparent and accountable to its membership and the USOC.”**

13.7 USS does not comply with this USOC Governance Guideline.

13.8 For example, until very recently, USS did not publish any of its financials or



Form 990s on its website or make them generally available to its membership in any other format. USS still does not post minutes of Board of Directors meetings on its website, as required by the USOC or in conformance with the representation (false) in its Form 990 that it does.

**13.9** Information about how the USS spends and allocates USOC grant money, upon which USS largely depends on to survive, is near impossible to obtain. On those rare occasions when financial information concerning USS can be obtained, such financial information lacks detail and is opaque, thereby contributing to the overriding lack of financial transparency of USS

**13.10** The failure of USS to comply with the transparency requirements of the USOC permits the USS leadership to operate under a cloak of secrecy, with no real financial accountability to its members, to the detriment of USS members and its member athletes.

**13.11** Another USOC Governance Guideline provides that:

**“NGB committees should be of the minimum number and size.... but NGBs must have at least the following 3 standing committees: Audit (which shall also have the responsibility for ethics matters, unless ethics issues are addressed by another committee), Compensation, and Nominating & Governance.”**  
(Emphasis supplied)

**13.12** USS’s Bylaws provide for eleven (11) standing committees ( too many to permit USS to be Board-governed and staff-managed); but to make matters even worse, there are now actually fifteen (15) committees, each stepping on each others’ toes, so to speak, with their overlapping authorities.

**13.13** Notwithstanding the great number of standing committees, USS fails to have a Nominating & Governance Committee which the USOC provides that NGBs “must have”.

**13.14** The existence of eleven (11) standing committees, each with their own separate defined powers and authority and, among them, a multitude of differing reporting responsibilities, renders impossible for USS to be “Board governed and staff managed.”

**13.15** The failure of USS to comply with the USOC’s directive that it “must” have a “Nominating & Governance Committee” permits the self – perpetuation of directors, officers and volunteers (such as the all powerful “Activity Managers” who report to the Board, the Executive Director and the President for “the success of their operations) contributes to the inability of USS to be “Board governed and staff managed”, all to the detriment of USS and its athletes

**13.16** The USOC Board of Directors adopted a further “Governance Guideline” for NGBs to follow which provides that:

**“NGB Boards should have at least 20% independent directors”**

**13.17** USS fails to comply with this USOC Governance Guideline.

**13.18** USS’s failure to comply with this Governance Guideline is curious in that USS has adopted a Bylaw providing for the criteria to determine who would qualify as an “independent” Director (see Article VII, Section 7.11 at page 28)

**13.19** Notwithstanding having adopted a Bylaw setting forth the criteria an individual would have to meet to qualify to be one of the several (three) members on the USS Board to meet the 20% guideline for “independent directors” on the USS Board, and the USOC Governance Guideline calling for the same, USS fails and neglects to comply with this Governance Guideline.

**13.20** The failure of USS to comply with this Governance Guideline negatively impacts on the good governance of USS, to the detriment of its athletes

**13.21** A fourth important USOC Governance Guideline that the USS fails to comply with, as discussed in Sections “IV” and “V” *supra*, is the requirement that:

**“NGBs must comply with all the requirements for membership as defined in the Ted Stevens Olympic and Amateur Sports Act, the USOC Bylaws, and any USOC Board policies.”**

**13.22** The failure of USS to comply with this Governance Guideline, discussed at length Section IV above, serves as yet another, and over-riding, independent grounds for the relief requested by Claimants, as set forth below.

### **RELIEF REQUESTED**

**WHEREFORE**, by reason of the foregoing, Claimants through their counsel, Stewart Occhipinti LLP, respectfully request the following relief:

(a) That USS immediately take any and all steps necessary to provide and ensure the implementation of “Safe Training” procedures for the protection and safety of athletes;

(b) That USS institute appropriate disciplinary and / or employment action against the athlete abusers, consistent with the due process required by the Sports Act, and the “Due Process Checklist”; and also institute appropriate disciplinary and/or employment action against those officers, directors and / or USS Staff who failed and neglected to act when they learned of the abuse;

(c) That all current and prospective Board members, officers, staff (including coaches) undergo mandatory tutorials administered by the USOC with respect to what constitutes “abuse” of athletes by coaches and others, and how to prevent it;

(d) That USS cooperate fully with respect to a comprehensive audit of its financials by the USOC Audit Department; and that the USS Board closely review the results of any such audit done by the USOC Audit Department, and take corrective action where recommended by the USOC Audit Department;

(e) That USS voluntarily accept to be placed “on probation” as if that were the recommendation and finding of a USOC Hearing Panel, after a hearing on the merits of a “Section 10 Complaint” filed by Claimants against USS with the USOC;

(f) That the USS promptly take steps to elect a Board of Directors which provides for the constituency required by the Sports Act, and also consistent with the USOC Governance Guidelines, which call for the reasonable representation of women and at least 20% athletes and 20% “independent” board members;

(g) That USS request that the USOC closely monitor and oversee USS’s athlete programs, including the expenditure of USOC funds intended to be provided to USS athletes and athlete programs, until such time as it is determined that USS is in full compliance with the requirements of the Sports Act, the USOC Bylaws applicable to NGBs and the USOC Governance Guidelines, and can competently and effectively manage athlete programs funded by the USOC in accordance with the policies and any other requirements of the USOC;

(h) That USS to refund the \$250 the filing fee paid to USS in connection with the filing of this Grievance;

(i) That USS pay Claimants’ attorneys its reasonable attorney’s fees, costs and disbursements in this matter, and

(j) That Claimants be granted such other and different relief as is just and proper under the circumstances.

**REQUEST FOR AN IN-PERSON HEARING**

Claimants respectfully request that this Grievance be heard and considered at an in-person Hearing before a USS Grievance Committee, which should be comprised of individuals (including 20% elite athletes) who are of high moral character, free of any conflicts of interest, bias in favor of the respondent, or prejudice against the Claimants (or any one of them).

**RESERVATION OF RIGHTS**

Claimants, through their attorneys, respectfully reserve their right to add additional Claimants hereto, as well as to amend, revise, supplement or otherwise modify the factual allegations, and the relief sought, in this Grievance, if and when additional information comes to Claimants' attention which would warrant such modification of Claimants' claims and/or the relief sought.

Dated: New York, New York,

August 30, 2012

Respectfully submitted,

STEWART OCCHIPINTI LLP

By: Edward G. Williams

Edward G. Williams  
Attorneys for Claimants  
65 West 36<sup>th</sup> Street, 7<sup>th</sup> Fl.  
New York, NY 10018  
Email: [egwilliams@somlaw.com](mailto:egwilliams@somlaw.com)

**VERIFICATION UNDER OATH**

Edward G. Williams, an attorney admitted to practice before the highest Court of the State of New York, hereby declares, pursuant to Title 28, United States Code, Section 1746, as follows:

I have read the foregoing Grievance and know the contents thereof; and the facts alleged therein; and the same are true and correct to the best of my knowledge, information and belief.

The basis upon which I make this Verification are the Ted Stevens Olympic and Amateur Sports Act, the Bylaws of the USOC and USS, the USOC Governance Guidelines, filings made by USS with the IRS, and other information provided by the Claimants herein.

The reason I make this Verification, as opposed to the Claimants, or any of them, is that the Claimants, and each of them, reside outside the state of New York, the location of my office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York NY on this 30<sup>th</sup> day of August, 2012.



\_\_\_\_\_  
Edward G. Williams

**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to Title 28 United States Code, Section 1746 that I have caused a copy of the foregoing to be served by e-mail and by First Class Mail on this 5<sup>th</sup> day of March, 2013 to the following:

**Mr. Mark Greenwald and Mr. Tom Frank** (individuals duly authorized to accept service of this Section 10 complaint on behalf of USS Speedskating.)

**Mr. Scott Blackmun, CEO**  
United States Olympic Committee  
**Scott.blackmun@usoc.org**

**Gary L. Johansen, Esq.**  
Associate General Counsel  
United States Olympic Committee  
**gary.johansen@usoc.org**

**Ms. Sarah Konrad**  
Chair, USOC Athletes' Advisory Council  
**skonrad2@yahoo.com**

**Mr. John W. Ruger**  
**Ms. Sara Clark**  
Athlete Ombudsman  
United States Olympic Committee  
**john.ruger@usoc.org**  
**sara.clark@usoc.org**

Accompanying the mailed copy of the Section 10 Complaint to the USOC is a check in the amount of \$250.00 which is the requisite filing fee in accordance with Section 10.3 of the USOC Bylaws.

The foregoing is true and correct.

Executed in New York, New York on this 5<sup>th</sup> day of March, 2013.



\_\_\_\_\_  
Edward G. Williams